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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Cases filed by Pacific Gas and Electric Company Pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation and Pacific Gas and Electric Company, Case No. 19-30088.	Investigation 19-09-016 (Filed September 26, 2019)

OPENING BRIEF AND COMMENTS OF MARIN CLEAN ENERGY

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SUMMARY OF RECOMMENDATIONS

In this brief and comments, MCE does not recommend rejecting the PG&E Plan; rather, MCE provides proposals to protect ratepayers and the public interest, including:

(1) Revisions to the PG&E Plan;

(2) Conditions of approval to the revised PG&E Plan; and

(3) Enforcement and protection procedures post-bankruptcy to ensure PG&E's promises become fulfilled commitments.

BRIEF RECOMMENDATIONS

The Current Proceeding (Enforcement and Protection)

MCE recommends that this proceeding remain open to be the venue for:

- Enforcing "neutral, on average" and "contributions of ratepayers"; and
- Ensuring compliance with additional elements of the PG&E plan as well as the Assigned Commissioner's Proposals, such as Enhanced Oversight and Enforcement.

Structural Proposals, Including Wires Only

MCE recommends that the Commission:

- Ensure that structural changes to PG&E remain available to the Commission post-bankruptcy; and
- Take steps to transition PG&E out of the retail electric generation service to simplify operations and improve their focus on safety.

"Neutral, On Average" and "Contributions of Ratepayers"

In order to achieve and maintain cost neutrality and recognize the contributions of ratepayers, MCE recommends that the Commission:

- Define the "ground" rules for cost recovery from ratepayers including:
    - Prohibiting on an upfront basis certain costs ineligible for ratepayer recovery, including PG&E's bankruptcy costs;
    - Disallowing rate recovery of any amounts determined to be ratepayer contributions;
    - Holding PG&E accountable to its clarifications to not recover, at minimum: (1) financing costs associated with Wildfire Fund contributions; (2) bankruptcy-related professional fees; (3) equity backstop fees; (4) holding company bridge

fees; and (5) 2017 and 2018 wildfire claims costs if the Commission decides to approve the $7 billion securitization proposal;

- Providing that following each determination of a "ratepayer contribution" in this proceeding, PG&E should have a 30-day window to file a motion in this proceeding containing a disallowance schedule for tracking and ensuring "neutral, on average" and "contributions of ratepayers" continue to be met; and
- Ensuring that any amounts required to be contributed to the Fire Victim Trust by PG&E should not be recoverable in rates.

Receivership

MCE recommends that PG&E consent to, and the Commission seek, appointment of a receiver to PG&E. PG&E has demonstrated that:

- there is a grave and immediate threat or actuality of harm;
- the use of less extreme measures of remediation have been exhausted and proven futile;
- continued insistence that compliance with the Court's orders would lead only to confrontation and delay;
- there is a lack of leadership to turn the tide within a reasonable period of time;
- there is bad faith;
- resources are being wasted; and
- a receiver is likely to provide a relatively quick and efficient remedy.

Revocation of the Holding Company Authorization

MCE Recommends that the Commission:

- Immediately order a directed outcome to prohibit PG&E – including PG&E Corporation – from entering into transactions that decapitalize PG&E for the benefit of PG&E's shareholders until such time as: (1) PG&E is in compliance with all financing and holding company requirements, or (2) the Commission has revoked PG&E's holding company authorization and deemed such transactions reasonable.
- Reject PG&E's aggressive requests for waivers from existing rules, including:
    - PG&E's violation of the first priority condition;
    - PG&E's request for waiver – including permanent waiver – from the Commission's capital structure requirements; and
    - PG&E's request for increase to its short-term debt authorization.
- Revoke PG&E's holding company authorization.

The PG&E Plan and PG&E's Governance "in Light of" AB 1054 Standards

MCE Recommends that the Commission:

- Find that the PG&E Plan and PG&E's governance structure, as proposed, fails to meet the standard of AB 1054 "in light of" PG&E's safety history and criminal probation; and
- Find that the PG&E Plan and PG&E's governance structure, as proposed, fail to meet the standard of AB 1054 "in light of" PG&E's recent financial condition.

Financing Authorizations

Generally

The Commission must:

- Deny any transaction that violates Section 701.5 which prohibits a utility from providing a guaranty to its holding company;
- Deny or require expedited cure for any failure to comply with Rule 3.5 which provides the Commission with necessary information to make a determination on any debt proposed; and
- Reject all improper uses of financing funds, including any funds transfers from the Utility to the Corporation or to shareholders in violation of the "first priority condition."

$11.85 Billion in Long Term Noteholder RSA Debt ("New Noteholder RSA Debt")

MCE Recommends:

- The Commission should deny the conversation of unsecured to secured debt by PG&E under the Noteholder RSA without any benefit to ratepayers; and
- If the Commission approves the transaction, the Commission should find that the "contributions of ratepayers" includes the differential in interest rates between secured and unsecured debt.

Up to $11.925 billion Total in Additional Short-Term Debt and/or Long-Term Debt ("New Additional Utility Debt")

MCE Recommends:

- To the extent the Commission authorizes the Additional Short-Term Debt or the New Additional Utility Debt, the Commission should authorize no more than $11.925 billion total under these two borrowing segments;
- The Commission should require additional disclosures regarding the refinancing of Pollution Control Bonds, including the counterparties of the proposed transaction and any and all associated claims, including, but not limited to, Pollution Control Bond (2008 F and 2010 E) and the value of those associated claims;
- The Commission should reject the Temporary Utility Debt as it proposes a guaranty of Utility assets for the benefit of the holding company in violation of Section 701.5; and

- The Long-Term Debt authorization request must be denied as it fails to contain any terms and conditions, term sheets or other information necessary for the Commission to make a determination, in violation of Rule 3.5.

Up to An Additional $6 Billion in Short-Term Debt

The Commission must deny PG&E's request for "up to an additional $6 billion in short-term debt as it has no terms and conditions, term sheets or information necessary for the Commission to make a determination in violation of Rule 3.5.

Securitization Proposal

The Commission should ensure that any securitization proposal exclude Community Choice Aggregator (CCA) revenues and other excluded revenues consistent with the Final Order regarding Customer Programs, including Pubic Purpose Programs.[1] These Customer Programs are defined in the associated Motion of the Debtors, and include (i) Deposit and Reimbursement Programs, (ii) Public Purpose Programs, (iii) Environmental Cleanup Programs, (iv) Third-Party Programs, which includes CCA, (v) GHG Credit Programs, and (vi) Customer Support Programs. The Commission should issue an order to ensure PG&E will not pledge these revenues as security for debt.

Fines and Penalties

The Commission should order PG&E to pay fines and penalties: (1) in full, and (2) without reducing Fire Victims Trust amounts.

ASSIGNED COMMISSIONER PROPOSAL RECOMMENDATIONS

Proposal #4 Board of Directors

MCE recommends that:

- Directors not be shared extensively between the Corporation and the Company; and
- All Directors should be required to be residents in PG&E service territory during their tenure.

Proposal #6 Regional Restructuring

MCE recommends:

- The Commission ensure that the PG&E Plan and the Regional Restructuring not preclude or preempt any other Commission-led restructuring of PG&E, including the process to make PG&E a wires-only company for electricity service; and

[1] [Dkt. 843].

- The Commission explore splitting PG&E into affiliates along functional and geographic lines.

Proposal #7 Safety and Operational Metrics

MCE recommends that:

- PG&E's safety and operational metrics include performance-based metrics to measure progress toward safety, affordability, reliability, equity, and climate outcomes to strengthen the shareholder interest in achieving those outcomes; and
- PG&E be precluded from defining the appropriate metrics, rather this should be performed in the fully transparent environment of the Commission.

Proposal #9 Executive Compensation

MCE recommends that:

- PG&E's executive compensation metrics be developed under the oversight of the Commission;
- The Commission ensure compensation arrangements are public;
- The focus on "financial performance" in PG&E's metrics must instead be "financial health";
- 95% of incentive payments should be tied to safety outcomes;
- Incentive payments should be prohibited if PG&E causes a safety incident that results in any fatalities; and
- Incentive compensation for all employees, including the CEO, be comprised of short-term and long-term incentives. Such incentives must be based upon the financial health and operatorial outcomes (including safety) of the utility, not shareholder-focused metrics such as earnings per share.

Proposal #10 Enhanced Oversight and Enforcement

MCE recommends that the Commission:

- Expand the focus of this enforcement beyond safety to include root causes;
- Create a "Step 0" of permanent enhanced oversight to improve transparency, which would include the formation of an Oversight Committee and increased transparency requirements;
- Augment "Step 4" (Chief Restructuring Officer) to also include a Commission-appointed examiner;
- Modify "Step 5" to reflect the involvement of the Federal Courts and to ensure that a receiver is broadly empowered to consider all options, including, for example, the sale of the gas business; and
- Ensure the availability of "Step 6" (Revocation of the CPCN) in the event of necessity or if other remedial steps are unfruitful.

MCE further recommends that the Commission take steps to place PG&E into "Step 5": Receivership.

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OPENING BRIEF AND COMMENTS OF MARIN CLEAN ENERGY

Marin Clean Energy ("MCE") respectfully submits the following Opening Brief and Opening Comments pursuant to: (1) Rule 13.11 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure;[2] (2) the November 14, 2019 Assigned Commissioner's Scoping Memo and Ruling; (3) the November 27, 2019 ALJ Ruling on Public Utilities Code Section 854;[3] the February 18, 2020 Assigned Commissioner's Ruling and Proposals ("ACR"); and (5) the March 6, 2020 ALJ Ruling Confirming Modification of Procedural Schedule.

[2] "Rule" as set forth herein means the Commission Rules of Practice and Procedure unless otherwise indicated.

[3] All "Section" references set forth herein are to the P.U. Code unless otherwise indicated.

CHAPTER 1. INTRODUCTION

In this proceeding, Pacific Gas and Electric Company (the "Company" or the "Utility") seeks to resolve its voluntary case of reorganization filed by the company and its holding company, Pacific Gas and Electric Corporation (the "Corporation" or "HoldCo", together with the Utility, "PG&E") pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of California, San Francisco Division ("Bankruptcy Court"), *In re* Pacific Gas and Electric Corporation and Pacific Gas and Electric Company, Case No. 19-30088 ("Bankruptcy Case").[4]

On January 31, 2020, PG&E filed its amended plan of reorganization ("Plan of Reorganization") with the Bankruptcy Court.[5] On that same day, PG&E filed its Prepared Testimony in this proceeding setting forth PG&E's plan to emerge from bankruptcy ("PG&E Plan").[6] The PG&E Plan is broader than the Plan of Reorganization.

MCE on March 9, 2020, PG&E filed a further amended plan of reorganization.[7] The primary purpose of such amendment was to further strengthen the position of shareholders, as set forth on Appendix A.

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[4] In this filing, MCE refers to documents filed by PG&E in the Bankruptcy Case and seeks judicial notice thereof. Each such filing is indicated by a standard bankruptcy reference to a docket number, namely: [Dkt. ####]. Each document may be publicly accessed by going to the bankruptcy docket at https://restructuring.primeclerk.com/pge/Home-DocketInfo. The docket number can be entered into the search bar.

[5] [Dkt. 5590] *Amended Chapter 11 Plan Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31, 2020 Filed by Debtor PG&E Corporation*.

[6] Exhibit PG&E-1 and supporting volumes.

[7] [Dkt. 6218] PG&E Plan of Reorganization dated March 9, 2020 (Redline). MCE refers in this brief and comments to the Plan of Reorganization dated January 31, 2020. References in this subsection are to paragraph numbers of [Dkt. 6218].

In this brief and comments, MCE does not recommend rejecting the PG&E Plan; rather, MCE provides proposed:

(1) Revisions to the PG&E Plan;
(2) Conditions of approval to the revised PG&E Plan; and
(3) Enforcement and protection procedures post-bankruptcy to ensure PG&E's promises become fulfilled commitments.

PG&E's primary interest in their bankruptcy has been to protect its shareholders, rather than planning for a better future or mitigating the substantial risk PG&E poses to ratepayers and the public. The Commission has the opportunity – and obligation – to protect the public interest.

PG&E entered bankruptcy after causing several devastating fires and incurring tens of billions of dollars in associated liabilities. In order to maximize their payout from the bankruptcy case, PG&E's unsecured bondholders initiated what some have called a hostile takeover. This was accomplished, in part, by introducing a competing restructuring plan that would fully and immediately compensate fire victims and largely wipe out PG&E's existing shareholders. This plan drew the support of the fire victims represented by the Torts Claimants Committee and represented a serious threat to PG&E's existing shareholders.

Subsequently, PG&E worked to neutralize the threat and protect its shareholders. This was accomplished by both agreeing to compensate fire victims at an equal dollar amount to the competing plan and by awarding the unsecured bondholders up-front fees and a security interest in PG&E's assets.[8] This maneuvering neutralized the competing plan and stopped the threat to existing shareholders. However, the PG&E Plan does not pay fire victims immediately. It provides half of their compensation in depressed shares of stock in PG&E's holding company that must

[8] Exhibit Abrams-1, Testimony at p. 6-7.

recover in value for fire victims to be made whole. Regarding whether the treatment of fire victims has been fair, PG&E's CEO stated:

"You know, fairness is often in the eye of the beholder."[9]

PG&E's decision to provide a security interest in nearly all of its assets exposes ratepayers to significant financial risk (including over-leveraging, undercapitalizing, and the real risk of PG&E returning to bankruptcy yet again), and dramatically limits PG&E's ability to finance and pay for future liabilities or investments.[10] PG&E has protected its shareholders while giving ratepayers and fire victims second-class treatment.

The Legislature responded to credit rating agencies' and PG&E's requests passing Senate Bill ("SB") 901 (2018) and Assembly Bill ("AB") 1054 (2019) to create financial safety valves for PG&E shareholders. In response to providing PG&E a significant financial cushion, funded by the public and ratepayers, PG&E chose to protect its own shareholders and max out its ability to borrow through its plan.

MCE recognizes that the PG&E Plan of Reorganization is the only plan currently pending before the Bankruptcy Court that would give PG&E a path to exit bankruptcy. Further, MCE recognizes that PG&E has decided that it must access the AB 1054 Wildfire Fund in order to remain a viable entity. PG&E has only offered this "Plan A" and has rejected all opportunities to consider a "Plan B" that would better serve the public interest. The Commission must not overlook the significant issues and deficiencies presented by the PG&E Plan. Rather, the Commission needs to take proactive steps both now and after PG&E's emergence from bankruptcy to meet the needs of ratepayers and the public.

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[9] Johnson (PG&E), Hearing Transcript Vol.1 (February 25, 2020), at 102 line 25 to 27.

[10] *See* Section VII.B.

CHAPTER 2. OPENING BRIEF

I. THE COMMISSION SHOULD INITIATE A PROCESS TO MAKE PG&E A WIRES-ONLY COMPANY

Within the Plan of Reorganization, PG&E requires "CPUC Approval" including "(b) a disposition of proposals for certain potential changes to the Utility's corporate structure and authorizations to operate as a utility."[11] The Commission should reject this requested moratorium on structural changes to PG&E. MCE recommends that Safety Order Instituting Investigation[12] remain open to consider necessary and appropriate changes to the Utility's corporate structure and authorizations to operate as a utility such as making PG&E a wires-only company for electricity service. MCE supports the testimony and proposals set forth by the Joint CCAs.[13]

PG&E should be transitioned out of the retail electric generation service to simplify operations and improve their focus on safety. PG&E is one of the largest utilities in the country and is entrusted to serve 16 million people across California.[14] However, PG&E's size and complexity of operations has been a barrier to safety.[15] Over the last ten years, PG&E has caused nearly 100 deaths in a series of safety catastrophes starting with the San Bruno pipeline explosion and continuing through the Camp Fire. As a result of San Bruno, PG&E was convicted of a felony, yet subsequently falsified safety-related records related to their "locate and mark" program for

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[11] Plan of Reorganization, Section 1.37.

[12] Investigation (I.) 15-08-019.

[13] Exhibit Joint CCA-1 (Beach).

[14] Exhibit Joint CCA-1 (Beach), at p. 9 lines 12-15.

[15] Exhibit Joint CCA-1 (Beach), at p. 9 line 8 to p. 11 line 1.

underground lines.[16] Neither Judge Alsup, who is overseeing PG&E's felony probation, nor the Commission, through fines[17] and the Safety Culture Investigation, have been able to avert continued catastrophes.

Throughout this brief, MCE identifies concerns with the PG&E Plan as being contrary to the public interest and focused on the short-term interest of existing shareholders. Simply put, the plan is inadequate and does not represent the change California deserves after PG&E-caused disasters. The Commission should send a clear and powerful signal to PG&E to renew its focus on safety by initiating a process to remove PG&E from the retail electric generation service.

The Commission should initiate the process through the Safety Culture Investigation to explore how to accomplish the transition and over what period of time. Making PG&E a wires-only company will be a significant change with a limited financial impact to PG&E because their retail generation service is essentially a passthrough. PG&E makes the vast majority of its profit from capital invested in physical assets (*i.e.* the "rate base") which would be largely unaffected by such a shift.

As set forth in the Joint CCA Testimony, these benefits include: a reduction of debt equivalence on the books of the Utility and improved focus on more critical lines of business which have had a history of challenges with regard to safety.[18]

Transitioning PG&E out of the retail electric generation service will save ratepayers money and should improve PG&E's safety performance.[19] It will also require careful examination of a number of issues such as the preservation and continued management of existing energy contracts.

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[16] D.________ (decision number to be assigned) in I.19-06-015, dated February 27, 2020.

[17] E.g. D.15-04-025 (San Bruno pipeline explosion fines and remedies).

[18] Exhibit Joint CCA-1 (Beach), at ii.

[19] Exhibit Joint CCA-1 (Beach), at p. 11 line 1 to p. 12 line 17.

The Commission should direct this process to begin in this proceeding to send a signal to PG&E and its creditors to plan accordingly.

II. THE COMMISSION SHOULD HOLD PG&E TO ITS CLAIM OF RATE NEUTRALITY BY KEEPING THIS PROCEEDING OPEN AND ENFORCING FURTHER ACCOUNTABILITY

In order for PG&E to be eligible to participate in the Wildfire Fund, AB 1054 requires that the Commission determine that the reorganization plan and other documents resolving the insolvency proceeding are "neutral, on average, to the ratepayers of the electrical corporation"[20] and "recognize the contributions of ratepayers, if any, and compensate them accordingly through mechanisms approved by the commission, which may include sharing of value appreciation."[21] PG&E has claimed their plan is neutral on average to customers as required by AB 1054.[22] However, the full costs of the PG&E Plan are not known to the Commission at this time.[23] For example, PG&E is planning to file an application for its Regional Restructuring plan separately from this proceeding.[24] As a result, the Commission can only estimate ratepayer impacts at this time and should keep this proceeding open if it approves the PG&E Plan to ensure it is neutral to ratepayers.

In order to achieve and maintain cost neutrality and recognize the contributions of ratepayers, MCE recommends that the Commission:

- Keep this proceeding open as the venue for enforcing "neutral, on average" and "contributions of ratepayers";

[20] Public Utilities Code Sections 3291((b)(1)(D)(ii) and 3292(b)(1)(D)(ii).

[21] Public Utilities Code Sections 3291((b)(1)(E) and 3292((b)(1)(E).

[22] Exhibit PG&E-1 (Kenney) at 10-1.

[23] *See* Sections IV, VI, VII, and VIII of this brief.

[24] Exhibit PG&E-1 (Vesey) at 5-36.

- Define the "ground" rules for cost recovery from ratepayers including:
    - Prohibiting on an upfront basis certain costs ineligible for ratepayer recovery, including PG&E's bankruptcy costs;
    - Holding PG&E accountable to its clarifications to not recover*,* at minimum: (1) financing costs associated with Wildfire Fund contributions; (2) bankruptcy-related professional fees; (3) equity backstop fees; (4) holding company bridge fees; and (5) 2017 and 2018 wildfire claims costs if the Commission decides to approve the $7 billion securitization proposal.
    - Proving that following each determination of a "ratepayer contribution" in this proceeding, PG&E should have a 30-day window to file a motion in this proceeding containing a disallowance schedule for tracking and ensuring "neutral, on average" and "contributions of ratepayers" continue to be met.

MCE further recommends that this proceeding remain open to be the venue to ensure compliance with additional elements of the PG&E plan as well as the Assigned Commissioner's Proposals, such as Enhanced Oversight and Enforcement.

A. In Order to Achieve and Maintain Cost Neutrality, the Commission Should Set Ground Rules Defining Unrecoverable Costs Up Front and Establishing a Process for Further Accountability

1. Unrecoverable Costs

When the Commission makes a decision in this proceeding, MCE recommends that the Commission also set the "ground rules" for ratepayer recovery. Certain PG&E costs should be deemed, on an upfront basis, ineligible for ratepayer recovery. For example, for the last PG&E bankruptcy, "PG&E [was] not authorized to reimburse PG&E Corporation or any other unit of PG&E for professional fees and expenses in connection with the Chapter 11 case, nor [was] PG&E

authorized to charge ratepayers directly or indirectly for these costs."[25] PG&E also "reimburse[d] the Commission for its professional fees and expenses in the Chapter 11 case."[26]

Furthermore, *any amounts required to be contributed to the Fire Victim Trust by PG&E should not be recoverable in rates*.[27] These amounts result from fires caused by PG&E equipment and such costs are the responsibility of PG&E's shareholders.

The Commission should also issue orders to hold PG&E accountable to the clarifications it made about what costs it will not seek to recover.[28] These include: (1) financing costs associated with Wildfire Fund contributions; (2) bankruptcy-related professional fees; (3) equity backstop fees; (4) holding company bridge fees; and (5) 2017 and 2018 wildfire claims costs if the Commission decides to approve the $7 billion securitization proposal. The Commission should rely on PG&E's statements and order that these amounts are not recoverable from ratepayers.

2. Accounting for Contributions of Ratepayers

The PG&E Plan creates multiple types of costs that may be imposed on ratepayers. PG&E relies on various agreements and amendments ("transactions") developed through the bankruptcy process and incorporated or referenced in the PG&E Plan. There are also cumulative impacts resulting from multiple transactions or overarching structural elements that create ratepayer costs that cannot be easily tied to a single transaction ("broader impacts"). If the Commission approves the PG&E Plan, this proceeding should remain open to evaluate and determine for each transaction

[25] D.03-12-035 at 77.

[26] D.03-12-035 at 18.

[27] See Plan of Reorganization, Section 1.79.

[28] PG&E's Clarifications in Response to February 21, 2020 Testimony of Other Parties, served February 26, 2020 to the service list in this proceeding.

or broader impact (1) whether it would result in a ratepayer contribution; and (2) a quantified dollar figure for that contribution. Some examples of these transactions and broader impacts include:

- the $6 billion in ratepayer spend[29] PG&E triggered through its decision to include the AB 1054 Wildfire Fund in its restructuring plan;[30]
- the $6 billion in short-term temporary debt to pay pre-petition debt of the Corporation;[31]
- the $7 billion securitization of ratepayer revenues to pay for shareholder liabilities;[32]
- the $1.2 billion in equity backstop commitments including the payments to existing equity for these commitments ranging from a minimum of $764 million to an estimated $1.8 billion if PG&E is not able to get financing from other sources;[33]
- $2 billion in Debtor in Possession Financing for PG&E to continue operating during their bankruptcy;[34]
- renegotiated agreements with existing unsecured bondholders and the difference in fees;[35]
- the risk that PG&E has shifted to ratepayers through over-leveraging its finances is a broad impact that must be quantified, represents a valuable credit enhancement,

[29] D.19-10-056 at pp. 20, 31-32.

[30] Exhibit PG&E-1 (Johnson), at 1-7, lines 2-6.

[31] Exhibit PG&E-1 (Wells) at 2-10 lines 4-11.

[32] [Dkt. 6013].

[33] *Infra.* Section (Governance).C.5.

[34] Exhibit PG&E-1 (Wells) at 2-16.

[35] Exhibit PG&E-1 (Wells), Noteholder RSA Debt.

and may lead to significant ratepayer costs if PG&E incurs another large liability and is unable to pay;

- the costs associated with PG&E's Regional Restructuring proposal; and
- the bankruptcy and legal costs for PG&E and the state.

The Commission should disallow rate recovery of any amounts determined to be ratepayer contributions.[36] Such an approach may be financially infeasible for PG&E immediately upon its exit from bankruptcy due to being overleveraged through the PG&E Plan. While PG&E's financially precarious position upon exit is inappropriate and a significant risk to ratepayers, it may need to be accommodated through this proposal to give PG&E time to absorb the disallowance. To that end, following each determination of a ratepayer contribution in this proceeding, PG&E should have a 30-day window to file a motion in this proceeding containing a disallowance schedule that provides a timeline to ensure ratepayer neutrality. This proposal is a necessary condition for the Commission to find the PG&E Plan rate neutral and meet the requirements to access the AB 1054 Wildfire Fund.

B. This Proceeding Should Be the Venue to Ensure Compliance with Other Areas of the PG&E Plan and to Implement the Assigned Commissioner's Proposals

This proceeding should also remain open to ensure compliance with additional elements of the PG&E plan as well as the Assigned Commissioner's Proposals, such as Enhanced Oversight and Enforcement.

[36] Sections 3291(b)(1)(E) and 3292(b)(1)(E).

III. PG&E'S GOVERANCE IS INADEQUATE AND EVEN IF SIGNIFICANT CHANGES IN GOVERNANCE OCCUR, PG&E IS ELEGIBLE FOR RECEIVERSHIP

While the Commission's determinations regarding the PG&E Plan are essential to this proceeding, MCE asks that the Commission not lose sight of the bigger picture, beyond the June 30, 2020 deadline imposed by AB 1054. PG&E has demonstrated significant failings, and the Commission must take action in new ways to prevent future loss of life and harm and risks to ratepayers.

MCE recommends an appointment of a receiver to PG&E, although it does not make this recommendation lightly. The remedy itself is in many ways a remedy of last resort. However, MCE believes it is appropriate for the Commission to move forward with this remedy; the Commission has the power to do so.[37][38]

A. Receivership Standard Applied to the California Prison System

In 2005, California's prison system was placed into receivership.[39] The case establishing the receivership used the following elements in its test for whether to approve the request for a receiver:

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[37] Section 701 (Commission Powers), which states: "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

[38] The venue for the request of the Commission could be in California state court, but more likely with the action in the Bankruptcy Court or in the Federal Court. *United States of America v. Pacific Gas and Electric Company*, Case 14-CR-00175-WHA (PG&E Criminal Probation Proceeding).

[39] The following article provides an overview of the context of that appointment: "Federal Court Seizes California Prisons' Medical Care; Appoints Receiver with Unprecedented Powers," *Prison Legal News*, March 15, 2006. Available at: https://www.prisonlegalnews.org/news/2006/mar/15/federal-court-seizes-california-prisons-medical-care-appoints-receiver-with-unprecedented-powers.

> The decision whether to appoint a receiver is a function of the court's discretion in evaluating what is reasonable under the particular circumstances of the case. [Citations Omitted.] As the case law concerning the receivership remedy for the reform of public institutions has developed over the past few decades, a multi-pronged test has developed to guide the trial courts in making this often difficult determination. The test includes the following elements, the first two of which are given predominant weight:
>
> (1) Whether there is a grave and immediate threat or actuality of harm to plaintiffs;
> (2) Whether the use of less extreme measures of remediation have been exhausted or prove futile;
> (3) Whether continued insistence that compliance with the Court's orders would lead only to confrontation and delay;
> (4) Whether there is a lack of leadership to turn the tide within a reasonable period of time;
> (5) Whether there is bad faith;
> (6) Whether resources are being wasted; and
> (7) Whether a receiver is likely to provide a relatively quick and efficient remedy.[40]

While specifically applicable to public institutions, PG&E's regulation as a public utility make the receivership test as set forth above a reasonable one.

1. Grave and Immediate Threat or Actuality of Harm

The extent of PG&E's harm to Californians is extensively documented.[41] These include:

- Gas explosions:
    - 2010 San Bruno gas explosion
    - 2008 Rancho Cordova gas explosion
- Fires as a result of poor vegetation management:
    - 2019 wildfires, including the Kincade Fire
    - 2017 and 2018 wildfires, including the Camp Fire
    - 2015 Butte fire

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[40] *Plata v. Schwarzenegger*, 2005 U.S. Dist. LEXIS 43796, *66-67, 2005 WL 2932253.

[41] Exhibit Joint CCA-1 (Beach) at p. 8 lines 5-11.

- 2004 Sims fire and Fred's fire
- 1999 Pendola fire
- 1994 Trauner fire

- Undisclosed groundwater contamination: 1952-1966 Hinkley

PG&E's safety failures are compounded by PG&E records falsification and records mismanagement, posing a grave and immediate threat to the public.

2. Less Extreme Measures of Remediation Have Been Exhausted or Proven Futile

PG&E has faced penalties, court action, monitoring and probation and continues to demonstrate an unwillingness to protect the public from the threat it poses. As discussed above, PG&E has been on felony probation and under investigation by the Commission for years. PG&E has been assigned the largest fine against a utility in the history of this country for the San Bruno Pipeline Explosion.[42] Yet PG&E has persisted in causing catastrophes and loss of life. Less extreme measures have been exhausted and are futile.

3. Insistence with Compliance Would Lead to Confrontation and Delay

PG&E's continued obfuscation and aggressive and deceptive litigation tactics demonstrate that PG&E is either unable or unwilling to change its practices to meet reasonable compliance standards. PG&E admits that full compliance with their existing requirements is not needed and has misled either the probation court or the Commission related to their vegetation management program.[43] This confrontational approach to PG&E's largest existing safety risk indicates that insistence with compliance will be met with confrontation and delay.

[42] D.15-04-024.

[43] See Chapter 2, Section V below.

4. Lack of Leadership to Turn the Tide

PG&E's executives and directors have demonstrated PG&E's ability to evade and to develop "creative interpretations" of the law and the truth.[44] PG&E is beholden to its shareholders alone.[45] This lack of leadership is also evident under the next element of bad faith.

5. Bad Faith

PG&E's deception of the Commission and use of legal maneuvering demonstrate that PG&E is not acting in good faith and is likely to be intentionally acting in bad faith.

PG&E Made a Key Financing Filing the Business Day After PG&E's Relevant Witness Testified. On March 2, 2020, PG&E submitted to the Bankruptcy Court a motion to approve Equity Backstop Commitments and Debt Financing Commitments (the "March 2 Financing Motion).[46]

The March 2 Financing Motion was submitted by PG&E to the Bankruptcy Court only <u>one business day</u> after PG&E Chief Financial Officer (CFO) and witness Jason Wells had taken the stand in the present proceeding.[47] This means that parties to this proceeding were unable to review this agreement or cross-examine the PG&E witness on this key agreement impacting PG&E's

[44] *See* Chapter 2 Sections IV, V, and VII in this brief.

[45] *See* Chapter 1 Section I in this brief.

[46] [Dkt. 6013] PG&E Financing Motion dated March 2, 2020. *Debtors' Second Amended Motion for Entry of Orders (i) Approving Terms of, and Debtors' Entry into and Performance under, Equity Backstop Commitment Letters, (ii) Approving Terms of, and Performance under, Debt Financing Commitment Letters and (iii) Authorizing Incurrence, Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses as Administrative Expense Claims* dated March 2, 2020.

[47] Mr. Wells had taken the stand on Friday, February 28, 2020. *See* Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), pages 516-683.

finances. Mr. Weissmann, counsel for PG&E, stated that this equity backstop commitment letter would not be brought before the CPUC.[48]

Furthermore, objections to the March 2 Financing Motion were due on March 12, 2020. Unlike in other venues, if a party fails to object or reserve its rights by the deadline in the bankruptcy court, the party largely loses its right to later object if additional information comes to light. This motion is scheduled to be heard by the Bankruptcy Court on March 16, 2020 and a decision may occur as soon as that date. This means that the Bankruptcy Court process will conclude prior to reply briefing at the Commission in this proceeding, precluding the insights of the Commission or parties to this investigation from being available to parties in the bankruptcy court.

This appears to be an attempt by PG&E to circumvent Commission jurisdiction and oversight to prevent unreasonable outflows from the holding company. These outflows may not only be impacting the capitalization of the utility but also the ability of the parent company to make necessary capital infusions to the utility as required by the Holding Company Conditions.[49]

PG&E Made Executive Compensation Disclosures the Day After PG&E's Relevant Witness Testified. On March 4, 2020 PG&E submitted to the Bankruptcy Court a motion to approve PG&E's executive compensation plan. ("March 4 Executive Compensation Motion").[50]

[48] "PG&E filed an amended equity backstop commitment letter […] referenced in Mr. Wells' testimony. […PG&E is] not proposing to put it in the record. It's a publicly available document." Weissmann (for PG&E), Hearing Transcript Vol. 6 (March 3, 2020), page 1078, lines 12-18.

[49] D.02-01-039.

[50] [Dkt. 6088] *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 503(c) for Entry of an Order Approving Debtors' 2020 (i) Short Term Incentive Plan; (ii) Long Term Incentive Plan; (iii) Performance Metrics for the Chief Executive Officer and President of PG&E Corporation; and (iv) Granting Related Relief.* Objections to this Motion are due in the Bankruptcy Court on March 18, 2020 and PG&E has asked that this motion be heard by the Bankruptcy Court on March 25, 2020.

This occurred only one day after PG&E's relevant witness, John Lowe, took the stand on this exact matter in this proceeding.[51] While this March 4 Executive Compensation Motion is consistent with the submissions in this proceeding,[52] it also makes additional key disclosures that are relevant to this proceeding.

6. Wasted Resources

PG&E's bankruptcy has expended millions, if not billions, of dollars of not only PG&E, but of its counterparties, regulators and victims. Notwithstanding the potential for bankruptcy to reduce costs and reorganize, PG&E plans to emerge from bankruptcy in a non-investment grade credit quality facing significant capital projects necessary to protect ratepayers and the public from further harm. This represents wasted resources that will have lingering effects such as imposing greater financial risks on ratepayers.

7. Receiver Is Likely to Provide a Relatively Quick and Efficient Remedy

While the remedy of a receiver is not likely to provide immediate outcomes, the prospect of actual improvement in PG&E operations, safety and financial condition is likely to be expedited under the receiver paradigm, rather than – as evidenced by PG&E practices and performance – under the influence of PG&E's shareholders. Relative to the status quo,[53] even years would be quick. PG&E has a defensive culture that is resistant to change.[54] Introducing independence into PG&E's operations is likely the most efficient way to address PG&E's serious safety issues.

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[51] Lowe (PG&E), Hearing Transcript Vol. 6 (March 3, 2020), pages 1165-1173.

[52] *See* [Dkt. 6090] Declaration of Lowe (PG&E) at 8.

[53] *United States of America v. Pacific Gas and Electric Company*, Case 14-CR-00175-WHA (PG&E Criminal Probation Proceeding); *see, also* I.15-08-019.

[54] Exhibit Abrams-1 at p. 9.

B. Venue for the Commission's Request to Place PG&E into Receivership

Receivership is an equitable remedy to be granted by the courts. The appropriate venue would be a federal court, such as *United States of America v. Pacific Gas and Electric Company*, Case 14-CR-00175-WHA (PG&E Criminal Probation Proceeding) before Judge Alsup. The Bankruptcy Court is an alternative if the Commission seeks a Chapter 11 trustee.

IV. BEYOND ANY AB 1054 CONSIDERATIONS, THE PG&E PLAN AND PG&E GOVERNANCE MUST BE FAIR AND REASONABLE

AB 1054 provides that the Commission must "approv[e] the reorganization plan and other documents resolving the insolvency proceeding, <u>including the electrical corporation's resulting governance structure</u> as being acceptable in light of the electrical corporation's safety history, criminal probation, recent financial condition, and other factors deemed relevant by the commission."[55] However, PG&E is failing the basic legal and reasonableness standards that must be met prior to addressing the higher standards set forth by AB 1054.

MCE Recommends that:

- The Commission should immediately order a directed outcome to prohibit PG&E – including PG&E Corporation – from entering into transactions that decapitalize PG&E for the benefit of PG&E's shareholders until such time as:
  - (1) PG&E is in compliance with all financing and holding company requirements, or
  - (2) the Commission has revoked PG&E's holding company authorization and deemed such transactions reasonable.

[55] Section 3292(a)(1)(C).

- The Commission should reject PG&E's aggressive requests for waivers from existing rules, including:
    - PG&E's violation of the first priority condition;
    - PG&E's request for waiver – including permanent waiver – from the Commission's capital structure requirements; and
    - PG&E's request for increase to its short-term debt authorization.
- The Commission should further revoke PG&E's holding company authorization.

A. PG&E Is Abusing the Holding Company Structure

PG&E is subject to a wide range of Commission decisions on the requirements of holding companies and affiliates.[56] These decisions are important to ensure PG&E is financially healthy and does not undermine the strength of the utility for the benefit of the shareholders.

1. PG&E Has Failed to Provide Adequate Information on the Funds of the Utility, Precluding Commission Oversight and Masking Transactions Decapitalizing the Utility

Notwithstanding the significant transparency requirements in the Bankruptcy Court, including the segregation of Corporation and Utility funds,[57] PG&E has failed to disclose the actual financial impact of the transactions contemplated in the PG&E Plan to the Utility. Instead, PG&E has chosen to aggregate the sources and uses under the proposed bankruptcy transaction across the Utility and the Corporation.

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[56] See, D.97-12-088 (adopting affiliate transaction rules); D.98-08-035 (modifying affiliate transaction rules); D.98-08-035 (adopting enforcement of Affiliate Transaction Rules); D.02-01-037 (defining the "first priority" condition); and D.06-12-029 (further revising the Affiliate Transaction Rules).

[57] See, e.g. Exhibit MCE-X-1, Attachment 3, PG&E Monthly Operating Report dated January 29, 2020, at 35.

PG&E has falsely claimed that it cannot provide to the Commission, the Utility's regulator, a set of sources and uses of the transactions as a result of "securities laws."[58] Notwithstanding this claimed prohibition, PG&E has publicly disclosed in other venues information specifically germane to the issues before the Commission. For example, while the amount of "Holdco Funded Debt" was undisclosed in PG&E's testimony, it was disclosed in the Bankruptcy Court as $650 million.[59] With regards to the Utility Pollution Control (PC) Bond Claims, PG&E simply has provided no information. The Utility PC Bond Claims have unique references and protections throughout the Plan of Reorganization and its supporting documents; however, the scale, impact and importance of those claims are unaddressed in the PG&E Plan. These details are necessary for the Commission to provide adequate oversight of PG&E's proposed exit from bankruptcy.

2. PG&E Has Demonstrated that the Utility Is Undercapitalized and Will Continue to Be Undercapitalized Upon Exit from Bankruptcy, in Violation of the First Priority Condition

As clearly stated by PG&E's Chief Financial Officer: "The company needs to satisfy its capital structure requirements in order to declare a dividend."[60] MCE agrees. Mr. Wells then continues by suggesting that through "adjustments" to the capital structure requirements – including, as Mr. Johnson noted, a <u>permanent</u> waiver of those requirements – PG&E would "become in compliance with this capital structure."[61] MCE disagrees that this is in any way compliance with the capital structure nor that this is an allowable or acceptable outcome.

PG&E's holding company, PG&E Corporation, is required to comply with the first priority condition. This condition states: "The capital requirements of PG&E, as determined to be

[58] Exhibit MCE-X-1, Data Request Response MCE_001-Q01, at 4.

[59] Exhibit MCE-X-1, Attachment 3.

[60] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), page 547 at lines 1 to 3.

[61] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), page 547 at lines 3 to 6.

necessary and prudent to meet the obligation to serve or to operate the utility in a prudent and efficient manner, shall be given first priority by PG&E's Board of Directors."[62] PG&E has not made a showing that the first priority condition has been met with regards to their plan. PG&E's Chief Financial Officer in fact is "not familiar with that condition."[63] PG&E's failure to make a showing regarding, much less demonstrate compliance with, the first priority condition is inexcusable.

The Commission, as a Conclusion of Law, has stated that "<u>The implementation of any scheme, whether under a bankruptcy reorganization plan or otherwise, pursuant to which a holding company would unduly benefit, to the detriment of its utility subsidiary and that utility's ratepayers, would be contrary to any reading of the first priority condition</u>."[64] Such a scheme is at issue here.

PG&E has demonstrated that it will not be in compliance with the Commission's capital structure requirements or temporary debt financing authorization limits. PG&E has asked for significant waivers within this proceeding, demonstrating insufficient capitalization of the utility. PG&E has asserted that it "anticipates that the Utility will emerge from bankruptcy with a balanced capital structure that complies with the regulatory capital structure authorized in D.19-12-056"[65] but <u>only if</u> the Commission provides for the following waivers and departures from Commission rules:

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[62] D.02-01-039 at 5.

[63] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), page 547 at lines 10 to 11.

[64] D.02-01-039 at 64, Conclusion of Law 8.

[65] Exhibit PG&E-1 (Wells), PG&E Prepared Testimony Volume 1 dated January 31, 2020, at 2-21.

> PG&E's request that "any debt used to finance the initial and annual contributions to the Wildfire Fund [… be] excluded from measurement of the authorized capital structure"[66] PG&E anticipates this to be $2.4 billion in long-term debt. [67]
>
> PG&E's request that "Temporary Utility Debt of $6 billion to pay wildfire claims… [be] excluded from the calculation of the capital structure" [68]
>
> PG&E's request that PG&E's $6-7 billion financings related to "certain Community Wildfire Safety Program capital expenditures with securitized debt […] and any conventional debt financing of these expenditures prior to refinancing debt [… be] excluded from the calculation of the capital structure for compliance and ratemaking purposes." [69]

Importantly, PG&E has noted that these "adjustments":

> apply equally with respect to the ratemaking capital for purposes of the holding company conditions (see D.96-11-017 and D.19-12-056) as well as the affiliate transaction rules (see D.06-12-029 (Rule IX.B.)), <u>including in connection with any dividends</u>. Alternatively, the Commission could issue a waiver from compliance with the authorized capital structure as contemplated in A.19-02-016 for these same purposes." [70]

To translate this for the Commission, PG&E seeks significant waivers from the Commission, leaving the utility financially vulnerable, while still paying out dividends to shareholders. This is patently unreasonable, as explained below.

3. *PG&E's Request for a Waiver from the Commission's Capital Structure Requirements Demonstrates Insufficient Capitalization at the Utility*

The Commission has already determined that the first priority condition incudes, but is not limited to, the utility maintenance of a balanced capital structure.[71] The Commission requirement

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[66] Exhibit PG&E-7 (Wells), PG&E Supplemental Exhibit with Errata dated February 5, 2020, at 2-22.

[67] Exhibit PG&E-7 (Wells) at 2-22.

[68] Exhibit PG&E-7 (Wells) at 2-22.

[69] Exhibit PG&E-7 (Wells) at 2-22 to 2-22A.

[70] Exhibit PG&E-1 (Wells) at 2-21, footnote 47, emphasis added.

[71] D.02-01-039 at 63, Conclusion of Law 5.

to maintain a balanced capital structure is designed to ensure that PG&E Company and its customers are protected from PG&E's parent or holding company extracting excessive and needed capital from the company.

These protections are needed now. PG&E is achieving such undercapitalization that if it is not authorized its inadvisable securitization proposal, PG&E would seek a permanent waiver in the capital structure:

> Q (President Batjer) We have talked, you have been cross-examined yesterday and today, regarding securitization. If, for whatever reason, we were not able to grant securitization, what is -- what is your plan?
>
> A (CEO Bill Johnson) The next step would be to ask for a permanent waiver in the capital structure.
>
> Q I'm sorry. Say that again.
>
> A A permanent waiver in the capital structure.
>
> Q A permanent waiver?
>
> A Yeah.[72]

4. *PG&E's Request for a Waiver from the Commission's Short-Term Debt Limits Demonstrates Insufficient Capitalization at the Utility*

This undercapitalization on a debt-to-equity ratio basis is made more concerning by PG&E's request to increase in its authorized short-term debt cap.[73] PG&E's proposed 50% increase of the Commission-authorized short-term debt authorization would increase that limit to $6 billion.[74]

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[72] Johnson (PG&E), Hearing Transcript Vol. 2 (February 26, 2020), at 267 line 20 to 268 line 1.

[73] Short-term debt is excluded from the Commission's calculation of debt-to-equity ratio. "The capital structure of an investor owned utility (IOU) is the proportional authorization of shareholders' equity and debt that comprise a company's <u>long-range</u> financing of its capitalization." D.19-12-056 at 6, emphasis added.

[74] Exhibit PG&E-1 (Wells) at 2-26.

The current short-term debt authorization decision, D.09-05-002, states that "The primary standard used by the Commission is whether a utility has demonstrated a reasonable need to issue short-term debt for proper purposes. Where necessary and appropriate, the Commission may attach conditions to the issuance of short-term debt in order to protect and promote the public interest."[75] In this proceeding, PG&E has not demonstrated "reasonable need" nor "proper purposes." As a result, the Commission is not able to determine whether the borrowings would "protect and promote the public interest."

Furthermore, PG&E's request for a waiver relies upon and earlier waiver decision in which PG&E was authorized entry into the Debtor In Possession (DIP) financing which explicitly stated: "The exemption granted in this decision is narrow and only provides PG&E the limited exemption from §§ 823 and 851 for purposes of pursuing DIP financing, as described below, and is conditioned on PG&E making a compliance filing setting forth the terms of the DIP financing."[76] The exemption was made solely as a result of an extraordinary situation[77] resulting from "a substantial risk that the public health and safety of California will be severely impaired with potentially catastrophic results."[78] This extraordinary situation was related to the reality of entering bankruptcy and the challenges with financing a company's operations at its most financially vulnerable moment. The PG&E Plan to rely on waivers means they will be financially vulnerable upon their exit from bankruptcy. This represents both a dangerous risk to ratepayers and a failure to adequately improve PG&E's financial condition through their Chapter 11 bankruptcy process.

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[75] D.19-02-016 at 2-3.

[76] D.19-01-025 at 2.

[77] D.19-01-025 at 4. "The Commission grants exemptions under § 853(b) only in extraordinary situations." Citing D.03-11-015, at 7.

[78] D.19-01-025 at 6.

5. *PG&E Has Failed to Disclose Material Transactions Impacting the Holding Company Requirements, Including the Terms of the Equity Backstop*

On March 2, 2020, PG&E submitted to the Bankruptcy Court a motion to approve Equity Backstop Commitments and Debt Financing Commitments (the "March 2 Financing Motion).[79] MCE addresses the bad faith timing of these disclosures in Section III.A.5 above. This appears to be an attempt by PG&E to circumvent Commission jurisdiction and oversight to prevent unreasonable outflows from the holding company. These outflows may not only be impacting the capitalization of the utility but also the ability of the parent company to make necessary capital infusions to the utility as required by the first priority condition.

MCE focuses on the Equity Backstop Commitments. The Equity Backstop Commitments are proposed transactions between PG&E Corporation and its major shareholders, including Knighthead Capital Management and Abrams Capital Management.[80] If PG&E is unable to raise equity in the market, it will rely upon these commitments; however, these commitments do more than provide "insurance" to PG&E. [81] Rather, they provide a substantial guaranteed payout to its current shareholders, and an even greater upside to those shareholders. Pursuant to the Equity Backstop Commitments:

> [A]ssuming that the Debtors implement the OII Capital Structure by drawing on the Equity Backstop Commitments and based on the Debtors' forecasted Normalized Estimated Net Income, the value of the Equity Commitment Premium would be approximately $1.2 billion at the currently estimated Equity Backstop

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[79] [Dkt. 6013] PG&E Financing Motion dated March 2, 2020. *Debtors' Second Amended Motion for Entry of Orders (i) Approving Terms of, and Debtors' Entry into and Performance under, Equity Backstop Commitment Letters, (ii) Approving Terms of, and Performance under, Debt Financing Commitment Letters and (iii) Authorizing Incurrence, Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses as Administrative Expense Claims* dated March 2, 2020.

[80] [Dkt. 6014] Declaration of Ziman (for PG&E) at 8.

[81] [Dkt. 6014] Declaration of Ziman (for PG&E) at 16 lines 9 to 10.

> Price. The value of the Equity Commitment Premium could exceed this amount in the event that PG&E Corp successfully consummates a marketed equity offering or rights offering in lieu of drawing on the Equity Backstop Commitments or if the Debtors implement a more leveraged capital structure. Based on the closing price of PG&E Corp. common stock on February 28, 2020, the value of the Equity Commitment Premium would be approximately $1.8 billion. Notably, except as described in footnote 2, the Equity Commitment Premium is payable in shares of New PG&E Corp. Common Stock[82]
>
> The referenced footnote provides:
>
> The Equity Commitment Premium is generally payable in stock; however, in the following limited circumstances each Equity Backstop Party may elect to be paid in stock or cash: (i) PG&E Corp. exercises its right to terminate the Equity Backstop Commitment Letters in order to enter into a transaction for the sale of the company or (ii) a plan of reorganization other than the Debtors' Plan of Reorganization is confirmed. If paid in cash, the Equity Commitment Premium would be approximately $764 million (6.364% of the full $12 billion commitment).[83]

These financial outflows are unacceptable in light of the precarious financial position of both PG&E Corporation and PG&E Company. Furthermore, as PG&E Company is insufficiently capitalized, this is a violation of the first priority condition. As set forth in the Ziman Declaration in the bankruptcy court, this Equity Backstop Commitment provides "significant value to the Debtors and the estates, particularly existing shareholders."[84] Another substantial impact is the dilution of share value held in the Fire Victim Trust. As payouts of equity occur under this backstop agreement, it would dilute the shares awarded to compensate fire victims thus reducing the value of already-depressed stock that must rebound before victims can be made whole. This will have the effect of delaying or precluding full compensation to fire victims and enriching existing shareholders.

[82] [Dkt. 6014] Declaration of Ziman (for PG&E) at 8-9, emphasis added.

[83] [Dkt. 6014] Declaration of Ziman (for PG&E) at 8, footnote 2, emphasis added.

[84] [Dkt. 6014] Declaration of Ziman (for PG&E) at 12, emphasis added.

B. PG&E Has Failed to Meet the Holding Company Requirements; PG&E's Holding Company Authorization Must Be Revoked and the Commission Must Take Urgent Steps to Prevent the Further Decapitalization of PG&E

Until such time as: (1) PG&E is in compliance with all financing and holding company requirements, or (2) the Commission has revoked PG&E's holding company authorization and deemed such transactions reasonable; *PG&E should be prohibited from binding PG&E to substantial equity payouts of $1.2 billion to $1.8 billion to its existing shareholders or cash outflows of $764 million as such funds may be needed to sufficiently capitalize the Utility.*

PG&E Corporation and PG&E Company are either unable or unwilling to bring the utility back to a balanced capital structure and have otherwise shown disregard for the financial health of the utility. As such, the Commission must enforce its regulation protecting ratepayers – and the utility itself – from excessive leverage, risk and decapitalization. MCE recommends that *the holding company authorization should be revoked*.

1. PG&E's Aggressive Requests to Maximize Payments to Shareholders Were Deemed Unreasonable and Contrary to the Public Interest in the Last Bankruptcy; the Commission Must Reject PG&E's Even More Aggressive Requests for Waiver and Modification of Commission Requirements Here

During PG&E's last bankruptcy, the Commission modified PG&E's Proposed Settlement Agreement, by:

> deleting Paragraph 6 ("Dividend Payments and Stock Repurchases"), which we find is unreasonable and not in the public interest. Paragraph 6 of the PSA proposes that <u>other than ensuring compliance with the capital structure and stand-alone dividend conditions in D. 96-11-017 and D.99-04-068, the Commission shall not restrict the ability of the boards of directors of either PG&E or PG&E Corporation to declare and pay dividends or repurchase common stock</u>. […] Because it is unreasonable and contrary to the public interest to preclude the Commission from

> considering such challenges, if any, we are exercising our regulatory authority to strike Paragraph 6.[85]

PG&E's requests, which were "unreasonable and contrary to the public interest" in the last bankruptcy, pale in comparison with the requests made in this proceeding and the actions taken and proposed to be taken in the bankruptcy court by PG&E. Here, PG&E does not even propose to comply with the capital structure requirements or the stand-alone dividend provisions, instead it seeks a waiver to both. The waivers to the capital structure requirement and the request to increase the Commission's short-term debt limit should be rejected or set on a strict path forward to remedy these deficiencies.

2. The Commission Should Immediately Order a Directed Outcome to Prohibit PG&E from Entering into Transactions to Decapitalize PG&E for the Benefit of PG&E's Shareholders

PG&E is seeking to hide an immediate dividend payment to its shareholders in the Bankruptcy Court as a "Equity Backstop Agreement." As discussed above in this section, any such action decapitalizing PG&E must be prohibited by the Commission and subject to claw-back as contrary to law and regulation. The Commission must evaluate other transactions protecting existing shareholders, such as the Noteholder Restructuring Support Agreement (RSA), to identify the decapitalization impact of such agreements and include those within the Commission's AB 1054 "neutral, on average" analysis.

3. The Commission Should Revoke PG&E's Holding Company Authorization

PG&E's failures to comply with the Commission's holding company requirements, including the first priority condition, and its actions taken to aggressively decapitalize PG&E

[85] D.03-12-035 at 29-30 (emphasis added).

warrant revocation of PG&E's holding company authorization. This should be done in such a way as to avoid undermining the claims of fire victims that are expected to receive half of their compensation through equity in the holding company. The Commission needs immediate oversight ability and transparency into the operations of PG&E Corporation to prevent further damage to the utility and risk to ratepayers.

V. THE PG&E PLAN AND PG&E'S GOVERNANCE FAIL TO MEET AB 1054 STANDARDS "IN LIGHT OF" PG&E'S SAFETY HISTORY AND CRIMINAL PROBATION

The Commission should find that the PG&E Plan and PG&E's governance as proposed fails to meet the standard of AB 1054 "in light of" PG&E's safety history and criminal probation. This finding will support additional and needed oversight of PG&E as discussed in Chapter 3 below.

A. PG&E Is Evading Compliance with its Conditions of Probation

PG&E has created a sorites paradox of compliance. PG&E has absurdly defined compliance as something less than "perfect compliance.". In essence PG&E has determined that "perfect" compliance isn't possible, so they consider "substantial compliance" still compliant. But such an approach does not answer at what point PG&E is actually non-compliant. Such an absurd claim is an admission of non-compliance and should not be accepted as anything more.

PG&E's Chief Ethics and Compliance Officer defined this absurd premise of compliance:

> Q (Kelly) And is PG&E currently in compliance with applicable vegetation management and clearance-related laws? […]
> A (Kane) So, we believe we are in substantial compliance. What we are not comfortable doing is certifying perfect compliance because of the […] very dynamic nature of our service territory which has millions of trees and thousands of individuals working to ensure that we do adhere to veg management and clearance-related laws and the fact that at any given moment in time, in fact even after an inspector has just looked at a tree or someone has just trimmed a tree because of natural occurrences in the environment; as an example, winds blowing which brings a branch close – […] ·In any case, because conditions can change so quickly and the environment is so dynamic that for us to certify that any given tree

is in compliance with let's say a clearance standard would be impossible.· We would have to actually have people posted at each tree day and night all the time and we just can't comfortably do that.· So rather than certify perfect compliance, we are stating that we are in substantial compliance.[86]
[…]

When pressed, PG&E demonstrated that it is simply unwilling or unable to define what substantial compliance is for purposes of their own operations:

Q (Kelly) How does PG&E define "substantial compliance?"· I would assume that in order to say, "we're in substantial compliance," PG&E has determined what substantial compliance means to PG&E. Can you define what that is?
A (Kane) I don't think I am the best person to define it. Maybe you can talk to the wildfire people. What I do know is the vast majority of the work that we attempted to complete last year to comply with this requirement was completed.[87]

Q (Kelly) So who defines what is substantial compliance?
A (Kane) All I can tell you is I do not.[88]

To further lower the bar, PG&E's Chief Executive Officer stated: "We've had some compliance issues, so for us to say we stand by the law is a good thing."[89] PG&E saying it supports the law, and actually following it are two different things. The former cannot stand in for the latter.

Furthermore, PG&E has argued that its Enhanced Vegetation Management (EVM) program would not reduce the frequency of PSPS before Judge Alsup,[90] but when asked before the Commission, and only when pressed, PG&E stated that it did.

[86] Witness Kane, Chief Compliance Officer for (PG&E,), Hearing Transcript Vol. 5, (March 2, 2020), at 824 line 4 to 826 line 4.

[87] Witness Kane, Chief Compliance Officer for (PG&E,), Hearing Transcript Vol. 5, (March 2, 2020), at 826, lines 10-21.

[88] Witness Kane, Chief Compliance Officer for (PG&E,), Hearing Transcript Vol. 5, (March 2, 2020), at 836, lines 14-16.

[89] Johnson (PG&E), Hearing Transcript Vol. 1 (February 25, 2020), at 157 lies 1-3.

[90] Order to Show Cause Hearing, Wednesday, February 19, 2020 (counsel for MCE was in attendance):

Q (Kelly) So just to clarify, [… b]etween normal weather conditions and some - let's call it - upper limit threshold, is it true that there would be a reduction in PSPS?

A (Vesey) Yes.[91]

B. PG&E Appears to Be Misrepresenting the Effects of the EMV Program to the Probation Court, Perhaps in Hopes of Avoiding Additional Probation Requirements; PG&E Ignores the Most Serious Red Flags of the Probation Monitor in its Testimony

PG&E is also misleading the Commission by failing to disclose significant observations by the probation monitor. PG&E's view of the Monitor Letter sent to Judge Alsup on July 26, 2019 is materially misleading:

> In August 2019, the Utility received a copy of a letter report from the Monitor to the Court on his team's vegetation management field inspections, in which the Monitor preliminarily observed that the Utility's contractors had <u>missed some trees</u> that should have been identified and worked under the Utility's Enhanced Vegetation Management Program, and that the <u>systems for tracking and assigning such work may have contributed to the missed work</u>. Notably, the vast majority of the potential missed trees were missed only in the sense that they arose under the aggressive standards that the Utility voluntarily chose to adopt in its Program, and that went beyond the minimum requirements imposed by law; <u>such misses do not indicate violations of state or federal regulations</u>.[92]

However, the Monitor team had found 61.32 exception trees per mile, including 1.14 potential hazard trees per mile. These hazard trees were each violations of Public Resources Code

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Judge Alsup: But don't you admit that if you were in full compliance with your own mitigation plan and with the state law, that there would be fewer times that you would need to do - resort to PSPS?

Orsini (for PG&E): No, Your Honor.

[91] Witness Vesey, CEO and President of the Utility, Hearing Transcript, Vol. 3 (February 27, 2020) at 483, lines 19-25.

[92] Exhibit PG&E-1 (Kane), at 8-18 line 23 to 8-19 line 1.

Section 4293 and were accompanied by a finding that "most potential hazard tree exceptions… were not properly documented… or marked." [93]

The Monitor Letter also informed Judge Alsup that "during the first 10 weeks of field inspections the Monitor team as notified PG&E of three urgent potential exceptions that could have resulted in fatalities, injuries or serious damage."[94] These three were:

> (1) "a tree that was within one foot of a primary conductor, despite being marked as 'tree work complete'";
>
> (2) "a tree that was in contact with a primary conductor"; and
>
> (3) "a tree within inches of the primary conductor, and had been contacting the conductor during wind gusts. [… A] tree work company reported to PG&E that it completed the work… even though it was not actually completed." [95]

To be clear, two of these three urgent exceptions involved improper recordkeeping. The Monitor found:

> The VM (vegetation management) inspections are not only revealing individual trees that are missed, including three active wildfire threats in high risk areas, but they also reflect gaps in processes (for example, contractor training) and other issues bearing on the overall efficacy of the VM program (for example, <u>systemic recordkeeping deficiencies</u>). Of course, five of PG&E's felony convictions from the 2016 trial related to record-keeping defects concerning its gas operations. [96]

C. PG&E Has Stated That It Will Comply with the PG&E Plan Safety Commitments "When Ordered by a Judge or a Regulator"

> PG&E provides no assurances to fulfill the safety promises in the PG&E Plan.
>
> Q (Strauss) Is there anything in place that ensures that the safety commitments are being made now won't be changed in the future?

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[93] Exhibit TURN-1A, Appendix F, Monitor Letter sent to Judge Alsup on July 26, 2019, at 19-20 (emphasis added).

[94] Exhibit TURN-1A, Appendix F, at 15.

[95] Exhibit TURN-1A, Appendix F, at 15-16.

[96] Exhibit TURN-1A, Appendix F, at 18 (emphasis added).

> A (Brownell) Well, I think once you've committed, been ordered by a judge or a regulator, or committed in a settlement and there will now be a public document that we can all agree on and track, it would be very difficult without giving some justification to either change, which you couldn't arbitrarily do, nor would you want to. You might in collaboration with others, like the Commission, say we think this would be a better way to go about that.[97]

However, even when ordered by a judge, PG&E is not fulfilling its safety commitments. The litany of safety concerns set forth in the record of this proceeding may be compared with the PG&E Plan which only states that PG&E "intends to comply with the conditions [of probation] going forward" and "anticipates and intends [… to] continue with the extensive probation efforts described above."[98]

VI. THE PG&E PLAN AND GOVERNANCE ARE NOT REASONABLE AND FAIR "IN LIGHT OF" PG&E'S RECENT FINANCIAL CONDITION

The Commission should find that the PG&E Plan and PG&E's governance as proposed fail to meet the standard of AB 1054 "in light of" PG&E's recent financial condition. This finding will support additional and needed oversight of PG&E as discussed in Chapter 3 below.

A. The PG&E Plan that Results in the Utility Being Non-Investment Grade Is Not Reasonable

PG&E in its testimony stated that the PG&E Plan of Reorganization "will successfully resolve the Chapter 11 cases in a manner that […p]ositions the Utility and PG&E Corporation to be financially healthy upon emergence."[99] The evidence demonstrates that this is not true. The Utility, were it to pursue unsecured debt, would have a credit rating designated non-investment grade speculative. The following compares the PG&E Plan outcomes to the credit ratings of average investor-owned utilities in the United States:

[97] Brownell (PG&E), Hearing Transcript Vol. 4 (March 28, 2020), at 733, lines 2-16.

[98] Exhibit PG&E-1 (Kane), at 8-21 line 25 to 8-22 line 4.

[99] Exhibit PG&E-1 (Wells) at 2-1.

Entity	Credit Rating	Description
PG&E Company (Utility)		
Secured Debt	BBB or BBB-[100]	Lower Medium Investment Grade
Unsecured Debt	"Mid- to high-BB"[101]	Non-Investment Grade Speculative
Combined PG&E Utility and HoldCo	"In the BB category"[102]	Non-Investment Grade Speculative
Average Investor-Owned Utility in the United States		
Secured Debt	BBB+ or A-[103]	Lower Medium Investment Grade to Upper Medium Investment Grade
Unsecured Debt	BBB+ or better[104]	Lower Medium Investment Grade or better

PG&E's non-investment grade rating will either lead to higher financing costs in the form of interest rates or additional collateral or security that must be pledged. This represents a cost to ratepayers and *must be accounted for in the Commission's process to ensure rate neutrality*.

VII. THE FINANCING AUTHORIZATIONS REQUESTED BY PG&E ARE NOT SUBSTANTIATED BY LAW OR THE RECORD AND SHOULD BE DENIED

With regards to the financing authorizations requested by PG&E, the Commission must:

- Deny any transaction that violates Section 701.5 which prohibits a utility from providing a guaranty to its holding company;

[100] Plaster (for PG&E) Hearing Transcript Vol. 2 (March 26, 2020), at 279 lines 20-22.

[101] Plaster (for PG&E) Hearing Transcript Vol. 2 (March 26, 2020), at 279 24-25.

[102] Plaster (for PG&E) Hearing Transcript Vol. 2 (March 26, 2020), at 290at 16-17.

[103] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), at 523 Lines 23-24.

[104] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), at 524 Lines 8-9.

- Deny or require expedited cure for any failure to comply with Rule 3.5 which provides the Commission with necessary information to make a determination on any debt proposed; and
- Reject all improper uses of financing funds, including any funds transfers from the Utility to the Corporation or to shareholders in violation of the "first priority condition."

A. PG&E Has Not Met the Basic Financing Requirements Set Forth in Rule 3.5 and Section 701.5

Rule 3.5 of the Commission's Practice and Procedure identifies the extensive requirements that must be met in a request for authorization of financing. *PG&E has not complied with this rule and therefore the request for authorization of financing should be denied or cured.*

Furthermore, PG&E has not complied with Section 701.5 which provides (emphasis added):

> [N]o electrical, gas, or telephone corporation, whose rates are set by the commission on a cost-of-service basis, shall issue any bond, note, lien, guarantee, or indebtedness of any kind pledging the utility assets or <u>credit for or on behalf of any subsidiary or affiliate of, or corporation holding a controlling interest</u> in, the electrical, gas, or telephone corporation." These are discussed with each transaction set forth below.

In addition, the uses of funds, in some cases, is prohibited, as described below.

B. $11.85 Billion in Long Term Noteholder RSA Debt ("New Noteholder RSA Debt")

PG&E requests to enter into $11.85 billion in long-term <u>secured</u> debt as contemplated by the Noteholder RSA and according to the terms described therein.[105] This New Noteholder RSA Debt would replace the <u>unsecured</u> debt reflected in the Financial Statement of PG&E dated

[105] Exhibit PG&E-1 (Wells) at 2-3; Exhibit PG&E-2 (Wells), PG&E Prepared Testimony Volume 2 dated January 31, 2020, Attachments 2.6 and 2.7 reflect this debt.

September 30, 2019[106] and the "Use" entitled "Prepetition Debt" in Table 2.3 of Mr. Wells's testimony.[107]

MCE Recommends with regard to the 11.85 Billion in Long Term Noteholder RSA Debt ("New Noteholder RSA Debt"):

- The Commission should deny the conversation of unsecured to secured debt by PG&E under the Noteholder RSA without any benefit to ratepayers.
- If the Commission approves the transaction, the Commission should find that the "contributions of ratepayers" includes the differential in interest rates between secured and unsecured debt.

1. The Conversion of Unsecured Debt to Secured Debt Raises Risks to Ratepayers and Victims in the Event of Future Material Events at PG&E and Should be Rejected

As the New Noteholder RSA Debt would be fully secured, this would mean that if any major safety incident or loss of life were to occur and PG&E were responsible, any victims would be second in line after this debt. Additionally, these secured creditors would have a much larger interest in the physical assets of the PG&E, which is a risk for ratepayers that require those assets for electricity service. Finally, PG&E's choice to use its assets as security means PG&E will have little capacity to raise debt at all, let alone at favorable rates, to pay for a large unanticipated liability. As with San Bruno and under SB 901, the ratepayers are positioned to cover any amounts the utility is not able to pay without triggering a credit downgrade. These ratepayer risks represent ratepayer contributions to the PG&E Plan and cannot be ignored.

[106] Exhibit 2.1 set forth within Exhibit PG&E-2 (Wells).
[107] Exhibit PG&E-1 (Wells) at 2-16.

2. *Ratepayers Must Be Made Whole for the Difference in Market Rate for Secured and Unsecured Debt*

As the Commission evaluates "neutral, on average" and "contributions of ratepayers," this conversion of debt must be viewed in light of (1) the difference in interest rates applicable to secured and unsecured debt, meaning ratepayers should be paying less with the assets of the company secured; and (2) the Noteholder RSA being a deal made by current PG&E shareholders to preserve their equity. As clearly stated in the Noteholder RSA, the main consideration given for the agreement was the agreements to:

> (i) support the Amended Plan, (ii) withdraw the Alternative Plan, (iii) suspend the Reconsideration Motion, (iv) withdraw all discovery issued in connection with the Exit Financing Motion and support the granting of all relief requested in the Exit Financing Motion, and (v) withdraw all briefing with respect to the Subrogation Claim impairment issues "[108]

Ratepayers must be made whole for each consideration and the difference in interest rates that ratepayers should have received, by taking the market rate at each rating level and determining the differential between the two for the scale of this facility. That amount should be designated as a ratepayer contribution and disallowed for rate recovery through the process discussed in Chapter 2, Section II above.

C. Up to $11.925 Billion Total in Additional Short-Term Debt and/or Long-Term Debt ("New Additional Utility Debt") Must Be Denied or Revised

Mr. Wells (PG&E) testified at hearings that PG&E's separate requests for $11.925 billion in each for additional short-term debt and additional long-term debt is for a total sum not to exceed $11.925 billion, together the "New Additional Utility Debt". [109]

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[108] Exhibit 2.5 set forth within Exhibit PG&E-2 (Wells), PG&E Prepared Testimony Volume 2 dated January 31, 2020, at 2 (also labeled 2-Exh.2.5-2).

[109] Exhibit PG&E-1 (Wells) at 2-3, lines 25-29 – identified as request (2) and request (4) in that paragraph.

MCE Recommends with regard to the $11.925 billion total in additional short-term debt and/or additional long-term debt ("New Additional Utility Debt") that:

- To the extent the Commission authorizes the Additional Short-Term Debt or the New Additional Utility Debt, the Commission should authorize no more than $11.925 billion total under these two borrowing segments;
- The Commission should require additional disclosures regarding the refinancing of Pollution Control Bonds, including the counterparties of the proposed transaction and any and all associated claims, including, but not limited to. PC Bond (2008 F and 2010 E) [110] and the value of those associated claims;
- The Commission should reject the Temporary Utility Debt as it proposes a guaranty of Utility assets for the benefit of the holding company in violation of Section 701.5; and
- The Long-Term Debt authorization request must be denied as it fails to contain any terms and conditions, term sheets or other information necessary for the Commission to make a determine, in violation of Rule 3.5.

1. Short Term Debt

PG&E has requested additional short-term debt to finance PG&E's Plan and subsequent exit from Chapter 11.[111] This is broken into three components:

[110] Plan of Reorganization, Section 1.143.

[111] Exhibit PG&E-1 (Wells) at 2-3.

Sources Table 2.2	Amount	Term Sheet / Commitment Letter
Refinancing of Pollution Control Bonds	$0.1 billion	None
New Debt	$5.825	None
Temporary Utility Debt	$6 billion	Bridge Commitment Letter, Exhibit 2.8[112] Note: To be used to pay fire victims but will be the responsibility of the shareholders. PG&E seeks to eventually replace this debt with $7 billion in ratepayer securitization.

PG&E intends to either refinance this short-term debt with long-term debt or with PG&E's ratepayer securitization request.[113]

In reviewing the sole term sheet provided by PG&E, MCE encountered several troubling – and prohibited – terms. These are primarily found in the "Mandatory Prepayments and Commitment Reductions" section.[114] These concerning provisions include: (1) prepayment and commitment reductions in the event of receipt of insurance and condemnation proceeds and intercompany transfers, (2) mandatory prepayment of the Corporation's debt at the same time as the Utility debt, and (3) undefined cross-defaults for material indebtedness.[115]

Each of these Utility loan provisions in different ways acts as a guaranty for the "sister financing" being undertaken by the Corporation. For example, if the Utility were to receive an insurance pay-out it would be required to pay down this facility and the "unsecured" facility of the

[112] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), at 539 line 21.

[113] Exhibit PG&E-1 (Wells) at 2-3, lines 26-28.

[114] Exhibit PG&E-7 (Wells) at 2-Exh.2.8-26 *et seq*.

[115] Exhibit PG&E-7, 2-Exh.2.8-26, -27 and -33.

Corporation. It would further leave PG&E without the insurance funds. The mandatory prepayment of the Corporation's debt at the same time as the Utility's is also a guaranty. The Commission has no assurance that the Corporation independently has the funds to concurrently fund this requirement and the Corporation's source of income to pay this is dividends from the Utility. As a result, if the Corporation cannot pay, the Utility is "on the hook." The material cross-defaults provision raise this issue as well. Any cross-default between the Company and the Corporation's debts would be an impermissible guaranty.

The result of these provisions is that these so closely tie the Utility Temporary Utility Debt with the PG&E Corporation Debt, acting as a "bond, note, lien, guarantee, or indebtedness of any kind pledging the utility assets or credit for or on behalf of any …corporation holding a controlling interest in, the electrical, gas, or telephone corporation."[116] MCE loosely defines this as a "guaranty." It is important to note that it is not simply a pledge of the utility's assets, but also the utility's credit.

Mr. Wells confirmed that both the $6 billion PG&E Company facility (see Term Sheet) and the $5.825 billion PG&E Corporation facility (no term sheet provided) would be the responsibility of the Company until the debt is able to be refinanced.[117] The Temporary Utility Debt is a violation of Section 701.5 and must be rejected.

2. Long Term Debt

PG&E seeks to utilize long-term debt in addition to or to replace the short-term debt above. Specifically, PG&E seeks authority to enter into secured debt securities, unsecured debt securities,

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[116] Section 701.5.

[117] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), at 551, lines 22-27.

direct loans and accounts receivable financing.[118] No term sheets or commitment letters have been provided with regard to these instruments. This is prohibited pursuant to Rule 3.5.

D. Up to An Additional $6 Billion in Short-Term Debt

The Commission must deny PG&E's request for "up to an additional $6 billion in short-term debt as it has no terms and conditions, term sheets or information necessary for the Commission to make a determination in violation of Rule 3.5.

PG&E has requested short-term debt authority for the Utility's working capital and short term debt needs for exit from bankruptcy and ongoing working capital and short term needs and contingencies after exit[119] This is not reflected on the Sources and Uses Tables.[120] PG&E has "not finalized the negotiations" for this $6 billion in short term authorization request and did not provide term sheets, again in violation of Rule 3.5.[121]

E. The Commission Should Make Clear that Certain PG&E Revenues, Including CCA Pass-Through Revenues and Public Purpose Charge Program Revenues Are Not Encumbered Under Any Securitization Proposal

As committed by PG&E in hearings,[122] the Commission should ensure that any securitization proposal exclude CCA revenues and other excluded revenues consistent with the Final Order regarding Customer Programs, including Pubic Purpose Programs.[123] These Customer Programs are defined in the associated Motion of the Debtors, and include (i) Deposit and Reimbursement Programs, (ii) Public Purpose Programs, (iii) Environmental Cleanup Programs,

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[118] Exhibit PG&E-1 (Wells) at 2-29 to 2-31.

[119] Exhibit PG&E-1 (Wells) at 2-3.

[120] *See* Exhibit PG&E-1 (Wells) at 2-16 and 2-17.

[121] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020), at 541 line 22-25.

[122] Wells (PG&E), Hearing Transcript Vol. 4 (February 28, 2020) at 520 line 26.

[123] [Dkt. 843] Final Order regarding Customer Programs, including Pubic Purpose Programs.

(iv) Third-Party Programs, which includes CCA, (v) GHG Credit Programs, and (vi) Customer Support Programs. *The Commission should issue an order to ensure PG&E will not pledge these revenues as security for debt.*

VIII. FINES AND PENALTIES

The Order Instituting Investigation in this proceeding identified as an issue whether a proposed plan of reorganization provides satisfactory resolution of claims for monetary fines or penalties for PG&E's pre-petition conduct.[124] While the Bankruptcy Court has determined that the pre-petition wildfire claims have been "satisfied" as required by P.U. Code Section 3292(a)(1)(B), the Commission must ensure that PG&E commits, on an enforceable basis, that fines and penalties: (1) will paid in full, including for pre-petition conduct not yet penalized, including with regard to the Tubbs Fire; and (2) do not reduce amounts to be contributed into the Fire Victim Trust or otherwise reduce fire victim recovery.

A. PG&E Must Commit, on an Enforceable Basis, that Fines and Penalties Will be Paid in Full and Will Be Allowed for All PG&E Pre-Petition Conduct, Even After PG&E's Emergence from Bankruptcy

PG&E's Plan of Reorganization requires "CPUC Approval" which includes "(c) satisfactory resolution of claims for monetary fines or penalties under the California Public Utilities Code for prepetition conduct." [125] While PG&E requests that the Commission determine that the PG&E Plan provides for satisfactory resolution of claims for monetary fines or penalties,[126] PG&E has been careful to not state that the plan provides for <u>full</u> payment of fines

[124] Order Instituting Investigation at 7.

[125] Section 1.37 of Plan of Reorganization.

[126] Exhibit PG&E-1 (Kenney), at 11-6.

and penalties. When asked directly about whether fines and penalties would be paid in full, PG&E failed to respond to the question asked:

> QUESTION 6
>
> Please provide a breakdown for each PG&E penalty or fine proposed to be levied against PG&E (in I.19-06-015, I.18-12-007, I.15-11-015, and I.18-07-008) and identify whether the amounts payable thereunder would be paid <u>in full</u> by PG&E's shareholders including on what time horizon. If the response is anything other than an unequivocal yes, please explain.
>
> QUESTION [sic] 6
>
> PG&E objects to this request to the extent that it is overbroad and vague and ambiguous. Subject to its objections, PG&E responds as follows:
>
> Shareholders have paid or will pay these fines and penalties <u>when due</u> per the Commission.[127]

Furthermore, the Plan of Reorganization Section 10.3 provides that any person "shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date."

As a result, the Commission must ensure that it is able to impose and collect all fines and penalties, including with regards to the Tubbs Fire, the Kincade Fire and all other conduct, including unknown conduct that has occurred. As such, the Commission should take protective measures to ensure such fines and penalties, if appropriate, and necessary investigations are not barred after PG&E emerges from bankruptcy.

[127] Exhibit MCE-X-1 (Wells), PG&E Response to Data Request MCE_001-Q06.

B. PG&E Must Commit, on an Enforceable Basis, that Fines and Penalties Will Not Reduce Fire Victim Trust Amounts

Fines and penalties are to be included in the total capped amount of the Fire Victim Trust.[128] This means, without Commission precautions, amounts due from PG&E would actually be taken from fire victims.

This issue has been identified by the Commission as reflected in the Presiding Officer's Decision in the Order Instituting Investigation on PG&E 2017 Fires ("Presiding Officer's Decision).[129] With regards to the fine applied therein, the Presiding Officer's Decision states: "$200 million shall be in the form of a fine payable to the General Fund <u>out of funds that would not otherwise be available to satisfy the claims of wildfire victims</u>."[130]

This was stated artfully by PG&E within that proceeding: "The Settlement reflects the reality of PG&E's financial constraints. The decision to forgo seeking rate recovery for $1.625 billion in wildfire-related expenditures imposes a cost on shareholders while preserving PG&E's ability to make victims whole. To put it plainly, the Settling Parties determined that PG&E should use its finite cash resources to prioritize the payment of wildfire victims rather than the General Fund."[131] *The Commission should order PG&E to pay fines and penalties in full without reducing Fire Victims Trust amounts.*

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[128] See the definition of "Fire Claims" which includes "fines and penalties." (Plan of Reorganization Section 1.75(j)). Such amounts are included in the cap of the Fire Victim Trust pursuant to the Tort Claimants RSA (restructuring support agreement).

[129] D._______ (decision number to be assigned) in I.19-06-015, dated February 27, 2020.

[130] D._______ (Presiding Officer's Decision) at 2, 34, 39, 47 and 73, emphasis added.

[131] PG&E Reply Comments on January 31, 2020 on the Proposed Settlement Agreement (I.19-06-015) at 9.

CHAPTER 3. COMMENTS ON ASSIGNED COMMISSIONER PROPOSALS

I. OVERVIEW

MCE recommends that the Commission expand the scope of the ACR proposals beyond its primary focus of safety. Safety is essential, but in PG&E's case, safety is a symptom of a root causes. These issues include management and governance structures that are misaligned with the public interest, a self-interested approach to providing utility service, and PG&E's belief that it can act with impunity. The Commission should expand the focus of the safety-specific ACR proposals to also include steps toward achieving financial health of the utility, compliance with law and ethical standards and development of a culture aligned with the public interest.[132]

II. PROPOSAL #4 BOARD OF DIRECTORS

With regard to PG&E's Board of Directors, MCE recommends that:

- Directors not be shared extensively between the Corporation and the Company; and
- All Directors should be required to be residents in PG&E service territory during their tenure.

[132] At this time, MCE does not provide comments on the following proposals: Proposal #1 Executive-Level Risk and Safety Officers; Proposal #2 Independent Safety Advisor; Proposal #3 Expanded SNO Committee Authority; Proposal #5 Approval of Senior Management; and Proposal #8 Earnings Adjustment Mechanism. MCE reserves its right to reply to comments to these proposals as it deems appropriate.

A. Directors Should Not Be Extensively Shared Between the Corporation and the Company

> ACR Proposal: "PG&E's board of directors should be comprised of the same directors as PG&E Corporation's board of directors plus one additional director who should be the CEO of PG&E."

To the extent PG&E continues to maintain a holding company structure, *the Board of Directors of PG&E Corporation and PG&E Company must reduce their overlap*. The current director-sharing paradigm has placed the utility at risk as a result of the holding company inappropriately extracting value from the Utility, as they propose to do through the PG&E Plan. Preserving separate boards with separate members, until such time as the holding company is consolidated with the utility, will improve the independence of the utility and helps to ensure that it is considering its risks and long-term capital needs – not simply short-term profits – prior to any weakening of the credit, capital structure or safety measures at the Company. While this will require effort of communication between the entities, the Company is more likely to focus on the specific challenges it faces as a utility, rather than on short-term metrics. With these distinctions, each board would be able to have distinct skills matrices that reflect the actual operations of those entities.

B. All Directors of PG&E Should Reside in PG&E While They Serve on the Board

> ACR Proposal: "At least 50 percent of the directors should be California residents at the time of their election."

The privilege of serving on the board of one of the nation's largest utilities should require residence within the utility's service area. Elected officials are required to live within the communities they serve, and PG&E board members should be no different. PG&E's operations have tremendous impacts on the financial wellbeing and safety of its customers. PG&E's recent wildfires and public safety power shutoffs directly affected millions of Californians. To strengthen the incentives for the PG&E board to act in the public interest, they should be required to live in the communities they serve and impact. A director working from another state is not able to truly appreciate what it is like to experience days of smoke exposure, the palpable or realized threat of wildfires, and days without electricity from a Public Safety Power Shutoff. Such a director would not understand the profound impact these events have on the lives of PG&E customers, nor would they interact with those customers on a day-to-day basis. These greater local insights from a physically present board member will increase the probability that the board will prioritize safety, ethics, and the public interest.

This proposal would not overly limit the pool of talent available to serve on PG&E's board. The residency requirement would only be imposed while the member is serving on the board. As a result, PG&E could still bring in expertise from outside of the service territory, so long as those individuals agree to reside in PG&E's service territory for the duration of their board term.

III. PROPOSAL #6 REGIONAL RESTRUCTURING

With regard to regional restructuring, MCE recommends:

- The Commission ensure that the PG&E Plan and the Regional Restructuring not preclude or preempt any other Commission-led restructuring of PG&E, including the process to make PG&E a wires-only company for electricity service;
- The Commission explore splitting PG&E into affiliates along functional and geographic lines.

A. Regional Restructuring should bring PG&E management closer to the customers they serve while not precluding other structural changes at PG&E that may be needed

> ACR Proposal: "Unless determined otherwise by the Commission, PG&E should create local operating regions to bring management closer to the customers they serve. By June 30, 2020 PG&E shall file an application for approval of a proposed regional restructuring plan […].

MCE shares the Commission's interest in bringing PG&E management closer to the customers they serve. PG&E needs to focus on the safe, reliable, and affordable operations of their system. PG&E's proposal for regional restructuring in the PG&E Plan may be an appropriate tool to effect that change. However, the proposal has unknown costs and should not be allowed to preempt or preclude any other action the Commission may take to restructure PG&E.

AB 1054 requires the PG&E Plan be neutral to ratepayers.[133] PG&E has not defined the costs associated with the regional restructuring element. Instead, PG&E plans to file a separate application on Regional Restructuring at the Commission. Even if the Regional Restructuring plan is the most cost-effective way to align PG&E with the public interest, the costs are still relevant to AB 1054 and must be included in the assessment of ratepayer contributions and rate neutrality. The Commission should identify any costs associated with Regional Restructuring and include them in the subsequent analysis of rate neutrality proposed in this brief.[134]

For years, the Commission[135] and the courts[136] have been exploring ways to reform PG&E into a safe company with input from stakeholders. The PG&E Plan and the Regional Restructuring element should not be allowed to preclude or preempt any other Commission-led restructuring of

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[133] AB 1054.

[134] *See* Chapter 2, Section II.

[135] See, generally, I.15-08-019.

[136] *United States of America v. Pacific Gas and Electric Company*, Case 14-CR-00175-WHA (PG&E Criminal Probation Proceeding).

PG&E. As discussed above,[137] the Commission should commence a process to make PG&E a wires-only company for electricity service. The Commission should also explore splitting PG&E into affiliates along functional and geographic lines. There are important options the Commission should not take off the table through approval of the PG&E's requested moratorium.[138] The Commission should disregard PG&E's request for a moratorium and move ahead with structural changes needed to serve the public interest.

IV. PROPOSAL #7 SAFETY AND OPERATIONAL METRICS

> ACR Proposal: "In the appropriate Commission proceeding, PG&E should propose attainable Safety and Operational Metrics that, if achieved, would ensure that PG&E provides safe, reliable and affordable service consistent with California's clean energy goals ("Safety and Operational Metrics"). These metrics will be subject to Commission review, revision, and approval. The Safety and Operational Metrics should be consistent with state law and include metrics that measure progress over defined periods of time in order to ensure that the PG&E is meeting its obligations to the state of California. The Commission may use any approved metrics to measure PG&E's progress on critical safety issues."

MCE recommends that:

- PG&E's safety and operational metrics include performance-based metrics to measure progress toward safety, affordability, reliability, equity, and climate outcomes to strengthen the shareholder interest in achieving those outcomes;
- PG&E be precluded from defining the appropriate metrics, rather this should be performed in the fully transparent environment of the Commission.

MCE supports the Commission's effort to establish Safety and Operational Metrics to measure PG&E's success. PG&E must be held accountable to verifiable binding commitments and measurable metrics, applied to all levels of the organization, and tailored to the applicable level of

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[137] *See,* Chapter 2, Section I.

[138] Plan of Reorganization, Section 1.37.

the organization.[139] PG&E should attempt to quantify the risk associated with its equipment and operations in ways that can be embedded in metrics and tracked toward success. PG&E must have performance-based metrics to measure progress toward safety, affordability, reliability, equity, and climate outcomes to strengthen the shareholder interest in achieving those outcomes.

However, PG&E should be precluded from defining these metrics as they have demonstrated, including in this proceeding, that they will set exceedingly low standards to achieve. For example, in PG&E's Wildfire Safety Plan, the quality assurance standard for tree-trimming in high threat fire districts (HTFD) was only achieving a standard of "92 percent 'meets expectations.'"[140] This means that PG&E could miss 8% of trees required to be trimmed in a HTFD. This exposes customers and Californians to extreme risk.

V. PROPOSAL #9 EXECUTIVE COMPENSATION

With regards to executive compensation, MCE recommends that:

- PG&E's executive compensation metrics be developed under the oversight of the Commission;
- The Commission ensure compensation arrangements are public;
- The focus on "financial performance" in PG&E's metrics must instead be "financial health";
- 95% of incentive payments should be tied to safety outcomes
- Incentive payments should be prohibited if PG&E causes a safety incident that results in any fatalities.

[139] Exhibit Abrams-1 at p. 14-15.

[140] Exhibit MCE-X-2, Pacific Gas and Electric Company Amended 2019 Wildfire Safety Plan dated February 6, 2019.

- Incentive compensation for all employees, including the CEO, be comprised of short-term and long-term incentives. Such incentives must be based upon the financial health and operatorial outcomes (including safety) of the utility, not shareholder-focused metrics such as earnings per share.

A. Executive Compensation Criteria Should Be Developed in the Transparent Environment of a Commission Proceeding; PG&E Should Not Be Trusted to Develop These on Their Own

PG&E's executive compensation metrics must be developed under the oversight of the Commission. PG&E's easily achievable targets and failure to address real outcomes demonstrate that this is necessary. For example, PG&E states that their executive compensation is based on 75% safety. That metric, while *technically* true, on a substantive basis is entirely inadequate. Each sliver of safety is broken down into sub-components such that PG&E would have to have serious deficiencies in eleven different safety areas for compensation to be reduced by the full 75%, while still excluding vast areas of risk, including gas explosions and PSPS events resulting in environmental danger or loss of life. Furthermore, the standards PG&E sets for itself in achieving goals is far too low and, frankly, off the mark.

B. Greater Transparency with Regard to Executive Compensation Is Necessary

ACR Proposal: "Publicly disclosed compensation arrangements for executives; Written compensation agreements for executives"

MCE strongly supports this proposal, particularly in light of the failure to disclose material terms of executive compensation to the Commission.

As filed in the PG&E bankruptcy docket, the 2020 estimated costs of the Short-Term Incentive Plan (STIP) and Long -Term Incentive Plan (LTIP) may exceed $450 million:

> "**2020 STIP**: The total approximate cost of the 2020 STIP ranges from $0 (if the Compensation Committee and the Independent Utility Board, as applicable, determine in their discretion that no payment should be earned) to $89,000,000 at

threshold to $177,500,000 at target performance to $266,000,000 at maximum performance." [141]

"**2020 LTIP**: The aggregate value of the 2020 LTIP ranges from $0 (if the Compensation Committee and the Utility Board, as applicable, determine in their discretion that no payment should be earned) to $28,200,000 at threshold to $75,100,000 at target performance to $187,800,000 at maximum performance, all payable in equity of reorganized PG&E Corp."[142]

Further, the Declaration of John Lowe discloses that PG&E's CEO incentive compensation is <u>solely</u> comprised of short-term incentives. Specifically:

"Pursuant to Mr. Johnson's approved employment terms, the 2020 PG&E Corp. Performance Metrics applicable to the 2020 CEO Performance-Based Awards, however, were to be determined at a later time. The PG&E Corp. Board later determined that the <u>2020 CEO Performance Metrics should align with the proposed Company-Wide Weightings in the 2020 STIP</u>, which prioritize safety by setting challenging yet achievable targets and giving public and employee safety-related metrics a 75% weighting."[143]

C. Long Term Incentive Compensation Should Be Based on Financial Health, Not Financial Performance

<u>ACR Proposal</u>: "Basing a significant component of long-term incentive compensation on safety performance, as measured by a relevant subset of by the Safety and Operational Metrics to be developed, as well as customer satisfaction, engagement, and welfare. The remaining portion may be based on financial performance or other considerations"

MCE recommends revising this recommendation to change the term "financial performance" to "financial health" in order to better align with the public interest rather than the shareholder interest.

[141] [Dkt. 6090] Declaration of Lowe (PG&E), at 11.

[142] [Dkt. 6090] Declaration of Lowe (PG&E), at 11.

[143] [Dkt. 6090] Declaration of Lowe (PG&E), at 15-16 (emphasis added).

D. Executive Incentive Compensation Should Be Withheld in the Event of any Material Safety Event or Any Loss of Life

ACR Proposal: "A presumption that a material portion of executive incentive compensation shall be withheld if PG&E is the ignition source of a catastrophic wildfire, unless the Commission determines that it would be inappropriate based on the conduct of the utility"

Specifically, MCE recommends that 95% of incentive payments should be tied to safety outcomes and should not be paid if PG&E causes a safety incident that results in one or more fatalities.[144] MCE recommends revising the ACR to reflect any material safety event or loss of life as follows:

> A presumption that a ~~material portion~~95% of executive incentive compensation shall be withheld if PG&E is the ignition source of a catastrophic wildfire or other material safety event occurs and that results in loss of life from PG&E conduct or omissions, unless the Commission determines that it would be inappropriate based on the conduct of the utility.

E. Recommended Addition to Proposal: Require CEO Incentive Compensation to Be Comprised of Short- and Long-Term Metrics Regarding the Financial Health and Operational Outcomes of the Utility

PG&E's current CEO Incentive Compensation is tied solely to short-term incentives. The Commission should impose requirements to ensure that incentive compensation for all employees be comprised of short-term and long-term incentives. Such incentives must be based upon the financial health and operatorial outcomes (including safety) of the utility, not shareholder-focused metrics such as earnings per share.

VI. COMMENTS ON ASSIGNED COMMISSIONER PROPOSAL #10 ENHANCED OVERSIGHT AND ENFORCEMENT PROCESS

With regard to the Commission's Enhanced Oversight and Enforcement Process, MCE recommends that the Commission:

[144] This standard is generally consistent with AB 1054, which allows for 100% of incentive compensation to be tied to a safety (fire) catastrophe resulting in one or more fatalities.

- Expanding the focus of this enforcement beyond safety to include root causes;
- Create a "Step 0" of permanent enhanced oversight to improve transparency, which would include the formation of an Oversight Committee and increased transparency requirements;
- Augment "Step 4" (Chief Restructuring Officer) to also include a Commission-appointed examiner;
- Modify "Step 5" to reflect the involvement of the Federal Courts and to ensure that a receiver is broadly empowered to consider all options, including, for example, the sale of the gas business;
- Ensure the availability of "Step 6" (Revocation of the CPCN) in the event of necessity or if other remedial steps are unfruitful.

A. Enhanced Oversight and Enforcement Must Encompass More Than Safety; Safety Is a Symptom of Other Root Causes

As MCE notes above, the Commission should expand the scope of the ACR proposals to view PG&E's safety shortcomings as a symptom of other larger challenges. This need for a broader focus is particularly true with regard to Enhanced Oversight and Enforcement processes. The Commission should expand the safety-specific Enhanced Oversight and Enforcement processes to include steps toward achieving financial health of the utility, compliance with law and ethical standards and development of a culture aligned with the public interest. Without these, PG&E is unlikely to achieve meaningful safety results.

B. The Commission Should Establish a Step 0: Permanent Enhanced Oversight to Improve Transparency and Align PG&E's Decisions with the Public Interest

MCE strongly recommends the Commission adopt a Step 0 for Enhanced Oversight and Enforcement. This step will result in increased and continued oversight of PG&E without requiring the corrective action plan needed for the other steps. This step is intended to address the ongoing challenges with aligning PG&E's decisions with the public interest. MCE proposes two distinct transparency and oversight proposals to include in Step 0 that should be adopted for PG&E immediately and indefinitely.

1. Formation of an Oversight Committee

MCE recommends improving oversight of PG&E decision making to better align with the public interest over time. MCE recommends establishing an Oversight Committee composed of independent representatives with expertise in safety, affordability, reliability, equity, and climate. This committee is inspired by the Low-Income Oversight Board that currently advises the Commission and serves as a liaison for low-income ratepayers and representatives.[145] However, this Committee differs as it would not be an agent of the Commission and would be positioned to advise the Commission, the Legislature, and the broader public.

The representatives of the Oversight Committee should include: (1) three customer representatives including a low-income customer representative, a disadvantaged communities customer representative, and an access and functional needs customer representative; (2) three local government representatives that are concurrently serving as elected officials from different communities PG&E serves; (3) an environmental representative; (4) two emergency services representatives including one from an organization with wildland firefighting expertise; and (5) one reliability representative with technical expertise in distribution and transmission grid operations. These representatives should be appointed by the Governor and will be charged with ensuring PG&E's decisions are aligned with the public interest.

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[145] Originally authorized in SBX2 2 (2001).

The Oversight Committee should be endowed with special powers including: (1) review and consultation with PG&E before PG&E files any requests for additional spending; (2) presumed standing to engage as a party in any Commission proceeding where PG&E has an interest and access to intervenor compensation; (3) standing authority to issue data requests to PG&E on any issue at any time regardless of the scope of open proceedings; (4) provide annual reports to the Commission that identify inconsistencies between PG&E's decision making and the public interest; and (5) the ability to provide testimony during legislative oversight hearings of the Commission. Such an oversight board, tasked with serving the public interest, should be a permanent feature of PG&E and a best practice to consider for other investor owned utilities in California.

2. Increased Transparency

PG&E must be exposed to stronger and continued oversight following their exit from bankruptcy. One of the best forms of oversight is simple transparency. By its own existence, it steers board rooms and back offices to set aside self-interest and follow the public interest. The Commission should look to two of California's stalwart stewards of the public interest: (1) the Public Records Act and (2) the Brown Act. These laws require public organizations to make their records available for inspection and make their decisions in public. The Commission's own ability to inspect records and serve as a gatekeeper to PG&E's decision making is necessarily limited by the resources of the Commission. Expanding transparency to the broader public will increase the incentives and oversight for PG&E to act in the public interest. The Commission should apply the provisions of the Public Records Act and Brown Act to PG&E indefinitely.

C. Step 4 Appointing a Chief Restructuring Officer Should be Augmented with the Commission Appointment of an Examiner

The appointment of a Chief Restructuring Officer may be a good step to effect internal changes within a company, it will only be effective where the company is internally motivated to change. As a result, Step 4 may be improved by augmenting the authority of the monitor or including a Commission-appointed examiner with authorities greater than those of a monitor. Examiners are used in the banking context evaluate the bank's risk management systems and controls and evaluating whether the bank is operating in in a prudent manner and in compliance with laws and regulations.

Examiners in the banking industry have the power to make a thorough examination of all the affairs of a bank and its affiliates, with the power to administer oaths while examining any officers or agents of the bank, and threat of forfeiture of the bank franchise for refusal to cooperate.[146] A similar examiner is appropriate for Step 4, to proactively and independently examine the utility while the Chief Restructuring Officer is taking control of operations. These two elements are also a logical precursor to an independent receiver being appointed to take control of PG&E operations in Step 5.

D. Step 5: Appointment of a Receiver or Chapter 11 Trustee

MCE addresses certain criteria for the appointment of an examiner in Chapter 2.III. The appropriate venue is a federal court rather than a state court. MCE recommends that the receiver not be constrained by prohibitions on its ability to "dispose of the operations, assets, business or PG&E stock," as set forth in the ACR. Upon the appointment of a receiver, all options to rehabilitate the Utility should be on the table.

[146] 12 U.S. Code § 481.

E. Step 6: Review of CPCN

MCE supports Step 6 and the pathway to revocation of the Certificate of Public Convenience and Necessity (CPCN) as an appropriate option for a utility that egregiously violates the public interest. PG&E may find itself in Step 6 if it cannot correct its course soon. Defining this path and demonstrating a willingness to revoke the CPCN sends an important message and creates new incentives for PG&E to act in the public interest. The Commission is wise to clearly articulate the process required for revocation of the CPCN.

VII. MCE RECOMMENDS THAT PG&E BE PLACED IN STEP 5, APPOINTMENT OF A RECEIVER, AT THIS TIME

The Commission should exercise its authority to appoint an independent monitor while it pursues receivership for PG&E. As discussed in Chapter 2, Sections IV (Rate Neutrality) and V (Hold Co) above, the PG&E Plan requires a waiver of the normal rules for a regulated utility, places the ratepayers at great financial risk, and inappropriately extracts value from the utility to benefit the corporation. Section VI above describes why PG&E should be appointed a receiver as soon as possible, which will require court action, most appropriately in the court of Judge Alsup, at the behest of the Commission. As a result of these extensive shortcomings, and PG&E's abhorrent safety record, PG&E requires a corrective action plan and should be appointed a monitor immediately pending appointment of a receiver.

VIII. CONCLUSION

MCE thanks President Batjer and Assigned Administrative Law Judge Allen for their consideration of these important matters.

Respectfully submitted,
/s/ Elizabeth Kelly

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Appendix A

The Revisions of PG&E's March 9, 2020 Amended Plan of Reorganization Are Examples of PG&E Providing Financial Return to Shareholders Notwithstanding PG&E's Precarious Financial Position

MCE on March 9, 2020, PG&E filed a further amended plan of reorganization.[147] The primary purpose of such amendment was to further strengthen the position of shareholders, namely:

- Ensuring that PG&E's existing shareholders are entitled to a lien on Utility property (Section 1.24);
- Releasing PG&E from environmental claims (Section 1.63), which would include environmental impacts regarding urgent shut-downs resulting from PG&E's failure to adequately communicate with commercial and industrial customers;
- Including within the capped amount for the fire victims any "HoldCo Recession or Damage Claim" (Section 1.78, Section 1.108), locking in the benefit of the Equity Backstop Agreements at the expense of fire victims, then further treating those claims as impaired to allow for PG&E shareholder voting of the plan (Section 4.14) and diluting the votes of creditors such as fire victims that are actually impaired;
- Obscuring, but not changing, the terms of "Reinstatement" to address the insolvency of PG&E, including post-bankruptcy (Section 1.178);
- Changing the definition of Utility Impaired Senior Note Documents (Section 1.228) to include other documents, such as side letters undisclosed to other parties;
- Ensuring that all "Administrative Expense Claims" are discharged on or prior to the Effective Date (Section 2.1) ensuring cash payment to Corporation shareholders;
- Allowing for all DIP Facility Claim collateral to be cancelled on the Effective Date (Section 2.3) placing the risk on PG&E;
- Allowing fees and charges to flow through the PC Bond (2008 F and 2010 E) documents to shareholders Section 4.22);

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[147] A redline of this plan of reorganization dated March 9, 2020 is available at [Dkt. 6218]. MCE refers in this brief and comments to the Plan of Reorganization dated January 31, 2020. References in this subsection are to paragraph numbers of [Dkt. 6218].

- Ensuring priority disbursement to PG&E shareholders from the Disbursing Agent from the Wildfire Trust (Section 5.6), ahead of the claims of fire victims;

- Ensuring reimbursement by PG&E for the "out-of-pocket expenses, excluding any professional fees" of the PG&E shareholders up to $150,000; and

- Pushing back approval of "for awards of compensation for services rendered and reimbursement of expenses incurred" from the Confirmation Date to the Effective Date (Section 11(h)), limiting review of those expenses before confirmation of the plan.